IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWENTY EIGHTH DAY OF OCTOBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE BILAL NAZKI

and
THE HON'BLE MR JUSTICE S.ANANDA REDDY

WRIT PETITION NO : 25490 of 2002

Between:

Thohida Sultana, W/o Sri Abdul Saleem, Occ:Proprietor, Allwyn Auto Agencies, Allied Plaza, R/o D.No.27-18-88/3, Durgaiah Street,

Governorpet, Vijayawada –520 002.

..... PETITIONER

AND

1. The Commissioner of Income Tax, Vijayawada
2. The Income Tax Officer, Ward-2(1), C.R.Buildings,M.G.Road, Vijayawada.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an appropriate order or direction more particularly one in the nature of Writ of Mandamus declaring that the proceedings of the first respondent in Hqrs/Tech/Grie/47/CIT/Vja/2002-03, dt.10.12.2002 is illegal and contrary to the provisions of Income-Tax Act,1961 and to further declare that second respondent has no jurisdiction to entertain and decide the assessment pursuant to the notice issued by the second respondent under Section 142 of the Income Tax Act, dt.20.12.2002 and consequently transfer the proceedings to ITO Ward-2(4).

Counsel for the Petitioner:MR.P.R.PRASAD

Counsel for the Respondents : MR.J.V.PRASAD

The Court made the following

O R D E R (Per the Hon'ble Sri Justice Bilal Nazki):

Heard learned counsel for the parties.

Controversy in the writ petition is with regard to jurisdiction of the Assessing Officer. During the pendency of this writ petition, we are told that assessment has already been made and against the order of assessment pertaining to the year 2000-2001, appeal has been filed by the petitioner, which is pending, before the appellate authority.

Since assessment has already been made by the authority, who according to the petitioner has no jurisdiction and the matter is pending before the appellate authority, therefore, we think it appropriate that the appellate authority should decide the question of jurisdiction as well.

The petitioner, as such, given liberty to raise all questions regarding the jurisdiction of the Assessing Officer before the appellate authority. The appellate authority is directed to decide the question of jurisdiction, in accordance with law, dehors the order of the Commissioner passed earlier.

The writ petition is accordingly disposed of. No order as to costs.

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(BILAL NAZKI, J)

28th October, 2004.

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(S.ANANDA REDDY, J)

Note:Office is directed to dispatch the copy

of the order immediately.

B/o

vrn

To

1. The Commissioner of Income Tax, Vijayawada
2. The Income Tax Officer, Ward-2(1), C.R.Buildings,M.G.Road, Vijayawada.

3 Two C.D copies